

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 3, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 273, 1/29/1999; SB 303,
1/29/1999; SB 306, 1/29/1999
Executive Action: None

HEARING ON SB 273

Sponsor: SEN. REINY JABS, SD 3, Hardin

Proponents:

SEN. BRUCE CRIPPEN, SD 10, Billings

J.A. Turnage, Chief Justice of MT Supreme Court
 Judge John Warner, MT Judges Assoc.
 Judge C.B. McNeil, 20th Judicial District
 SEN. JOHN HARP, SD 42, Kalispell
 Judge Susan Watters, 13th Judicial District
 Dennis Paxinos, Yellowstone Co. Attorney
 Charles Brooks, Yellowstone Co. Commissioners
 Gary Spaeth, State Bar Assoc.
 Kim Christopher, Lake Co. Attorney
 Christine Cook, Big Horn Co. Attorney
 Carl Schweitzer, Kalispell Chamber of Commerce
 William Barron, Lake Co. Sheriff
 Al Smith, MT. Trial Lawyers Assoc.

Opponents: None

Opening Statement by Sponsor:

SEN. REINY JABS, SD 3, Hardin, said this bill creates another judicial district and adds a judge to two other districts. He said these districts have high case loads and the district judges have a difficult time scheduling cases and it is impossible to get speedy depositions. Judicial district 13 consists of Yellowstone, Big Horn, Carbon, and Stillwater Counties, which have five judges. He said in 1997 there were 6786 cases with an average case load of 1357 cases per judge. Yellowstone County had 86 percent of those cases. This bill would create a new judicial district including Big Horn, Carbon and Stillwater County. Yellowstone Co. would remain the same with the five district judges. This would still give the judges an average case load of 1175 in Yellowstone Co. The average of the state's case loads are 943. This bill will also add a judge to the 11th and 20th judicial district which is Flathead, Lake and Sanders Counties. Flathead County has the highest case load of any district in the state. He discussed the mechanics of the bill.

Proponents' Testimony:

SEN. BRUCE CRIPPEN, SD 10, Billings, said the judges in district 13 came to the conclusion that a way to solve the case load problem was to create a new district and provide a new judge for that district.

J.A. Turnage, Chief Justice of MT Supreme Court, handed in testimony in favor of SB 273. EXHIBIT(jus27a01) EXHIBIT(jus27a02)

{Tape : 1; Side : A; Approx. Time Counter : 9:14 a.m.}

Judge John Warner, MT Judges Assoc., said they have all been involved in this overload of cases. There has been a population influx in western Montana, especially in the Flathead valley. The county commissioners have planned on this and have made room in the court house for the third judge that is proposed here. Fourteen hundred case loads are unmanageable. He said other judges from other districts try and help, but it only complicates things as there is case after case that needs to be dealt with in a timely matter. The Thirteenth Judicial District is a little different, because they have been dealing with the population influx for some time. The computerization is there, they have law clerks for each judge, and more efficient ways of handling cases. But all of the band-aids are being used up. He said about a year ago the judge from Plentywood had to go down to Big Horn and try cases and get them caught up. But this is only a band-aid because the judge from Plentywood has to go home and take care of his own cases which he was now behind on. It becomes a statewide problem because there are too many people and not enough court judges. District judges have statewide jurisdiction and there is a lot of windshield time traveling to these different districts, etc.. He said in Kalispell they have tried using standing masters, judge pro-temps, and mandatory settlement conferences. Judges want to have the time to research and read cases and listen to the people and they can't do this with the present system.

Judge C.B. McNeil, 20th Judicial District, said he was the first judge elected in 1984 when the Twentieth Judicial District was formed. He said at that time the case load in Lake and Sanders County was 750 cases per year. In 1990 it was 950 per year and in 1996 it was 1350 cases per year. He said they can expect this trend to continue. He said these are not just statistics, these are people. The court system and its' judges exists to serve the people. He said he averages a 60 hour work week and vacations are impossible. The population growth of this state is such that there are increasing demands on the judicial system and people have a right to use this system. He said there is a House bill that addresses redistricting. This is a good idea, but should compliment this bill not be in place of it. There are districts in the eastern part of the state that do not have very heavy case loads, but they have huge geographic areas to cover.

SEN. JOHN HARP, SD 42, Kalispell, said in the Eleventh Judicial District they have the heaviest case load in the state. He said in Flathead County they built a justice center large enough to house three judges. He said when the last redistricting lines were drawn, the population in Flathead Co. was 35,000 people, today there are over 70,000.

Judge Susan Watters, 13th Judicial District, said because of the heavy case load they set dissolution cases which include modification of custody, child support, etc., six deep on family trial days. If case number one goes to trial, they have to find another place to set the other five cases. She said each judge in the Thirteenth Judicial District sets aside 2 weeks a month to hear criminal cases and they average 25 cases. If case number one goes to trial, they have to find some place to set the 24 other cases. This causes speedy trial issues and makes it difficult to meet deadlines. Most criminal cases take 6 months before the trial date is set. Juvenile, sanity, abuse and neglect cases, etc. have to have preliminary hearings within 20 days. As a result of these priorities, civil cases, get bumped way down the line. Civil cases are often complicated and may take a week of trial and they don't have this kind of time. She gave an example of her week. She said she travels to Stillwater County every other Monday. On Thursdays, she hears juvenile, abuse and neglect cases. On Fridays she sets dissolution cases. She said she only has Tuesday and Wednesday to research cases and make decisions and often she is hearing cases on those days also. It is a huge scheduling problem and is frustrating for the litigants to find out their cases may not be heard for over a year.

Dennis Paxinos, Yellowstone Co. Attorney, said his office alone in Yellowstone County has filed 1067 felony matters, 352 youth court matters, 184 dependant neglect matters, 154 sanity commitments, and 189 temporary protective matters and these all take priority. He said each judge is assigned over 400 cases alone from his office and there are only 220 work days. He said when Big Horn County has a homicide case, all the cases in Yellowstone Co. get moved because they don't have a judge. He said this bill is going to cost Yellowstone Co. some money. They currently receive about \$65,000 per year from the outlying counties. He said the way the district is set up now there is a lot of windshield time and the creation of this new district would cut that down. He said they need more judges to address the needs of urban and rural problems. He said there is a technical problem with the bill in that it goes into effect July 1, but there is no judge being appointed until January 1 and the effective date might want to be delayed until December 31, 1999. He said they should still go through the judicial nomination process and have the Governor make the appointment.

Charles Brooks, Yellowstone Co. Commissioners, submitted a letter of support for **SB 273. EXHIBIT(jus27a03)**

Gary Spaeth, State Bar Assoc., said this is not a judicial, lawyer, or statistic problem it is a people problem and they need to have a more efficient court system.

{Tape : 1; Side : A; Approx. Time Counter : 9:42 a.m.}

Kim Christopher, Lake Co. Attorney, said they have cases up to 11 deep trying to get trial dates. She said they have had a 20 percent increase in population from 1990 to 1997 and also an increase in serious crime in Lake County. She said during the last two years there has been a substantial period of time that they have been using two judges to cover case loads. She said the first two months in 1998 they had their judge on the bench every week hearing a trial. **EXHIBIT(jus27a04)**

Christine Cook, Big Horn Co. Attorney, rose in support of **SB 273**. **EXHIBIT(jus27a05)**

Carl Schweitzer, Kalispell Chamber of Commerce, stood in support of **SB 273**.

William Barron, Lake Co. Sheriff, said they have had a population increase in Lake County and as a result there has been an increase in all types of crime. He said they are not dealing with numbers but with people and victims and they need to get in and out of the system in a timely matter.

Al Smith, MT. Trial Lawyers Assoc., stood in support of **SB 273**.

{Tape : 1; Side : B; Approx. Time Counter : 9:55 a.m.}

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked why the July 1, date was a problem? **Justice Turnage** said there is no problem with that effective date. It is a benefit and if it is moved it might delay the acquisition of the new judge. The judicial nominating commission could start on July 1 looking for candidates. That takes about four months for this process. The appointment wouldn't be made until the middle of November. If the date is moved this will delay the nominating commission and then they would be in the middle of 2000 before getting a judge appointed.

SEN. HALLIGAN asked if they are appointed would they have to file for election at that time. **Mr. Turnage** said they would have to stand for election in November of 2000. **C.B. McNeil** said the judge for the new Twentieth District would be elected in the year 2000 and would take office in January of 2001. This time delay was built in so that Lake County would have a two year period to prepare for the fiscal impact.

SEN. SUE BARTLETT said there has been support from Flathead, Yellowstone, and Big Horn County Commissions but have Sanders, Stillwater, and Carbon County commissions taken a position on this bill. **C.B. McNeil** said Sanders County had not taken a position, but indicated that they were in favor of the bill. **Christine Cook** said the position of Stillwater is they support this bill and Carbon County does not.

SEN. RIC HOLDEN said there is no support from Carbon or Stillwater County and there is no taxpayer support for this bill. There is a significant fiscal impact on this bill and how it will affect local governments. A lot of problems arise in the discovery period and judges need to lay the law down and tell these attorneys to get their cases together in a more timely matter. He asked how many cases does the Thirteenth Judicial Court have. **John Warner** said there was 1357 cases per judge in the Thirteenth Judicial District. There were 6786 cases in 1997 and 6642 in 1998 that were filed in this district.

SEN. HOLDEN said he doesn't have a problem with adding a judge to Flathead and Lake Counties, but he has a problem with page 2, line 5 with creating a new district. He asked why not just add another judge to this district rather than creating a new district? **Judge Waters** said originally they talked about adding a 6th judge to the district, but they do not have the physical space in the court house. Stillwater County is in support of this bill, Carbon County is not and the primary reason is because of travel time. The judge would probably sit in Big Horn County because they have the physical space to house another judge. This judge would still have to travel to Stillwater and Carbon Co. but they would probably get better service than they do now.

SEN. HOLDEN asked if the local taxpayer has an opportunity to vote on this or are these tax increases imposed as a matter of acceptance? **SEN. JABS** said there would be a local impact because the county would have to pick up the cost of the clerks, etc.. This would probably be included in their county mills. **Judge Warner** said he is paid by the State of Montana, the local impact of this would be from the staff. Judicial districts are funded by a statistical analysis of case load and Big Horn County sends money into the judicial district now to pay for their portion of the case load. Big Horn Co. would still pay their judge about the same because of the case load.

{Tape : 1; Side : B; Approx. Time Counter : 10:14 a.m.}

SEN. HOLDEN referred to the fiscal note. He asked if this proposal is in the Governor's budget? **Pat Chenovick, Administrator of**

Supreme Court, said no this is not proposed in the Governor's budget.

CHAIRMAN LORENTS GROSFIELD referred to the fiscal note and said it doesn't talk about court reporters and is this included? **Pat Chenovick** said the local fiscal impact does include court reporters.

CHAIRMAN GROSFIELD referred to **(EXHIBIT 4)** from Lake County. **Kim Christopher** said it was her understanding that Lake Co. would get Judge McNeil full time and Mineral and Sanders County would share if another judge was hired. They were concerned about additional costs in Lake Co. but in the last two years they have been handling this cost already because an additional judge is having to come in and sit at the same time Judge McNeil is. **Judge McNeil** said they are concerned about paying another judge, but the bottom line is they have to do something to address the increasing population and demand for services by the court system.

CHAIRMAN GROSFIELD asked what the House Bill on redistricting does? **REP. PAUL SLITER, HD 76, Somers**, said HB 339 orders a study to be conducted by an interim committee to address problems in the apportionment of judicial districts throughout the state. There has been population shifts and case load have gone down in some areas. If districts can be merged, etc. this will create a fiscal impact of zero because they have moved judges around instead of adding judges. He said neither Mineral or Sanders County approve of the merging of these two counties and letting Lake County stand on its own.

CHAIRMAN GROSFIELD asked if the districts that only have about 400 cases are in eastern Montana. **J.A. Turnage** said yes, they are in eastern Montana, but he didn't think cases went as low as 400. The redistricting study is appropriate, but it should not be a substitution for this bill.

Closing by Sponsor:

SEN. JABS said Carbon County is for this bill. He said taxpayers want justice done by having speedy trials, etc. and most taxpayers would be in favor of this bill. Billings has 85 percent of the cases and this would give rural areas a better chance to be served by a judge. Big Horn has twice the cases that Stillwater and Carbon have and they have the space to house a judge. Judicial districts have high case loads and are backlogged and defendants are not getting speedy trials and causing additional expenses to the counties. From 1995 to 1997 case loads have increased in the Thirteenth Judicial District by 552 cases and this will keep increasing.

{Tape : 1; Side : B; Approx. Time Counter : 10:26 a.m.}

HEARING ON SB 306

Sponsor: SEN. DUANE GRIMES, SD 20, Clancy

Proponents:

Miriam Luse, Attorney, Self

Kendra Neveras Self

Amy Pfeifer, Women's Law Section of the State Bar

Sharon Hoff, MT Christian Coalition

Opponents:

Vicki Knudsen, Self

Dr. Sarah Baxter, Clinical Psychologist in Missoula

Mike Smart, Cascade Co. Justice of Peace

Virginia Knight, Attorney in Bozeman

Corbin Howard, Attorney

Kerry Newcomer, Missoula Attorney

Mars Scott, Missoula Attorney

Opening Statement by Sponsor:

SEN. DUANE GRIMES, SD 20, Clancy, gave some background on what happened to this bill last session dealing with parenting plans. He discussed the pros and cons of mediation. Last session this was a major plan to go from joint custody to parenting plan. His attempt with this bill is to make it easier on family and children and to decrease unnecessary litigation. He used the example of a young women who is on a parenting plan and the husband is very vindictive and controlling. There is nothing criminal going on, but scary as far as emotional abuse is concerned. He said on page 2 of the bill, they are making some changes concerning the best interest of the child. The custodian will be the one who has provided most of the primary care during the child's life. He discussed line 24, page 2, which eliminates the option of going back and determining best interest. This will help eliminate additional litigation. He discussed line 29, page 2, and page 3, line 1. He read line 6, page 3. He said they took out the serious endangerment part last session, but it should be put back in. He said they took this out because it was hard to define and could cause additional litigation. But there are certain areas that need this litigation. He said their concern last session was to give judges maximum latitude to judges and this still maintains that principle. He turned in letters of support. **EXHIBIT(jus27a06)**

{Tape : 2; Side : A; Approx. Time Counter : 10:41 a.m.}

Proponents' Testimony:

Miriam Luse, Attorney, Self, turned in testimony in favor of **SB 306. EXHIBIT(jus27a07)**

{Tape : 2; Side : A; Approx. Time Counter : 11:00 a.m.}

Kendra Neveras Self, said in 1997, her ex-husband got an order saying he was the primary care giver of the children and he got custody. At the time, the children where one and three and they had special needs. She said it was a year before this went to court and she got custody of her children again. However, during that time her children's needs were not met. Children need to be heard and their needs must be met.

Amy Pfeifer, Women's Law Section of the State Bar, said they believe continuity of care and stability in a child's life is important. Continuity of care is important in making initial arrangements in parenting of a child. It also should be important when a parent suggests a modification of residency that the child's needs are thought of. Requirement to show serious endangerment should be put back in and there should be higher standards for a change of residency. She said they should care more about the residency change of a child than child support issues.

Sharon Hoff, MT Christian Coalition, supported this bill.

Opponents' Testimony:

Vicki Knudsen, Attorney, Self, said the ideal family that they like to talk about is mom and dad happily living together, raising their children. This ideal family does not keep track on a daily basis which parent changed the baby's diaper, prepared the meals or changed the oil in the car. They don't keep track of buying groceries, who took them to the dentist, mowed the law, or gave the kids a bath, etc. Then one day the bottom falls out and the ideal family is no more. All the jobs that were described still have to be done in each household, but there is now two households and one parent to do everything. She said three years ago they changed family law to make it more workable. This bill will put back the very things that they worked to have taken out in 1997. There is no definition for primary care provider and it is very difficult to define. They want a family unit to work together. Traditionally men make more money than women and usually women only work part-time. If the father does the traditional jobs around the house, does he forfeit the right to

be considered the primary parent for the care of the children? If they are going to make primary care provider the basis of this, then aren't they teaching parents that they better keep track just in case they have to prove they are more capable than the other parent to be the primary care giver? The fact is that the younger children spend more time with their mother and the older children with their father. These children are entitled to two parents and to go back to the serious endangerment statute is getting into a property issue with these children. If there has to be a separation, encourage children to be with both parents. The issue of who didn't do the most work or why mom and dad got divorced is not important once the divorce takes place. The issue is do these children have a right to have both parents and do the parents have a right to start providing the things that they didn't when they were married. There are already 13 specific factors that are set out in section 212. The courts look at these when deciding what is in the child's best interest. She read page 2, line 24. She said in 1996 she represented a man to try and get modification of custody. The mother in three years had moved seven times and the children had changed schools five times. The father had moved once since the divorce. The children talked to the judge and their decision comes second after the parents if they are under 14. Women do not have enough power, control, or a lot of the good paying jobs, but lets not make up for that by letting them have total control of the children and treating them like property. Serious endangerment does not look at the best interest of the children. She said there is a provision to take out the apportionment of transportation. By taking this out they are inviting parents to move further and further away to legally separate the children from the other parent.

{Tape : 2; Side : A; Approx. Time Counter : 11:18 a.m.}

Dr. Sarah Baxter, Clinical Psychologist in Missoula, said everyday in her office she visits with children whose parents have been divorced. She said she sees a wide range of conflict level amongst families. Kids tell her over and over again that they want relationships with both of their parents. They also say they want safe and predictable lives. Children do psychologically, behaviorally and emotionally better when they have continued contact with both parents after the divorce. The parenting plan gives parents who are divorcing something to work toward, rather than presenting who is the best parent. They can now work out what is the best arrangement for their children. She said she has not seen one case in which something in the children's best interest was not implemented because of the current law. She also said there has not been one case in which the child had to remain in a dangerous situation because of the current language. She said if they go back to the children

staying with the primary care giver, they cannot focus on what those children actually need. Children's needs change as time evolves over time under these new family systems. She said if they return to the serious endangerment statute they encourage parents to accuse each other of mis-behavior and this affects children.

Mike Smart, Cascade Co. Justice of Peace, said he has handled over 3200 divorces and the legislation they passed in 1997 has been a major step into the 20th century. He said the main concern is for the child. He said they got rid of the serious endangerment statute last time and by putting it back in it eliminates options and closes doors. He said they can't change a child's situation until it seriously endangers their mental, physical and emotional health. No child deserves to be in a situation that is miserable. He discussed subsection 4. The judge needs maximum latitude and options of the situation that is in front of him. He referred to section 40-4-220.

Virginia Knight, Attorney in Bozeman, said she is a divorced parent and became her son's primary care giver when she was divorced. She said her son would like to live with both parents. She said if the legislature gives the court the awesome power of trying to decide who has been the primary care giver, it is difficult. She said she has a case in which the father lives in Colorado and the mother and children live in Montana. And the live in boyfriend beats the mother. Staying in this situation is not in the best interest of the children, but it would be difficult to prove if they went back to the serious endangerment law.

{Tape : 2; Side : B; Approx. Time Counter : 11:31 a.m.}

Corbin Howard, Attorney, rose in opposition of **SB 306**.

EXHIBIT(jus27a08) He also turned in many letters of opposition.

EXHIBIT(jus27a09)

{Tape : 2; Side : B; Approx. Time Counter : 11:45 a.m.}

Kerry Newcomer, Missoula Attorney, said custody matters should be on a level playing field and what is best for the children.

Mars Scott, Missoula Attorney, said it cost \$120 to file an amendment to a parenting plan that is going to be contested. Since the new law has gone into effect, the clerk of district courts have been collecting these filing fees for any amendments to parenting plans. He said there are four counties that have had no contested amendments to parenting plans filed since the new law went into effect. He said the average is about one contested

amendment per month per judge. He said these amendments have not gone up since 1997. If they would let the current system work, they would see further reductions of these amendments and less litigations. He said if this law passed it would be impossible to make any amendments to a parenting plan. **EXHIBIT(jus27a10), EXHIBIT(jus27a11)**

Questions from Committee Members and Responses:

SEN. DOHERTY said since they made the changes in 1997 they have had less than two years to adopt the changes and why do they need to change this again. **SEN. GRIMES** said so much was changed last session, that for one example there is always another example on the other side. He said there are instances where power egocentric fathers are creating havoc in the lives of mothers and children. He said there are some areas that need some more work.

Closing by Sponsor:

SEN. GRIMES closed on **SB 306**.

{Tape : 2; Side : B; Approx. Time Counter : 11:55 a.m.}

HEARING ON SB 303

Sponsor: **SEN. FRED THOMAS, SD 31, Stevensville**

Proponents:

Steve Browning, MT Hospital Assoc.
Jerry Loendorf, MT Medical Assoc.

Opponents:

Al Smith, MT Trial Lawyers Assoc.
Richard Dicks, Self

Opening Statement by Sponsor:

SEN. FRED THOMAS, SD 31, Stevensville, referred to an amendment for the bill. **EXHIBIT(jus27a12)** He said the context of the bill is on page 4 that deals with liens for attorneys and the payment of medical services by an insurer to the hospital. He handed out a case document. **EXHIBIT(jus27a13)** This bill has to do with who gets paid for medical services, does the provider get paid first or does the attorney? The court determines what the attorney fees are and enforces that law. He passed out examples for **SB 303**. **EXHIBIT(jus27a14)**

{Tape : 2; Side : B; Approx. Time Counter : 12:03 p.m.}

Proponents' Testimony:

Steve Browning, MT Hospital Assoc., rose in support of **SB 303**.
EXHIBIT(jus27a15)

Jerry Loendorf, MT Medical Assoc., said their providers are paid a substantial discounted fee. He read lines 18-19, page 2. He said this is the charge that they submit, not what they get paid. He said they are not here to argue that attorneys should not be paid, but the fees should be paid at least at a discounted amount.

Opponents' Testimony:

Al Smith, MT Trial Lawyers Assoc. handed out proposed amendments and explained them. **EXHIBIT(jus27a16)** He said they support the idea that claimants should get the care that they need and are entitled to. He said they also support that the medical providers should get payment for the care that they have provided. But it denies attorneys the fees for the services that they provide. Without the attorney, the provider doesn't get to furnish care or they don't get payment for the care that has already been provided for. He said when the insurer doesn't pay the doctor, the attorney steps in to help the claimant get those benefits paid for. He said with **SB 303** there will be three losers: the claimants, providers, and attorneys. Attorneys will be reluctant to take these cases if they don't get the fees. He referred to **EXHIBIT (13)**. He explained the amendments in more detail. **EXHIBIT (16)** He said the only people that really benefit from this system are the insurers who are denied the treatment in the first place.

Richard Dicks, Self, said he was disabled about five years ago when he was struck by a tree in the back of the head. He has had extensive medical treatment and care. He said his attorney has helped him to push the insurance company to get the medical care he needed. Insurance companies are powerful and without an attorney they cannot be challenged. Attorneys need to be paid for helping injured people. Medical people do not want to pay, the claimant can't afford it, so it should be the insurance company's responsibility.

{Tape : 3; Side : A; Approx. Time Counter : 12:18 p.m.}

Questions from Committee Members and Responses:

SEN. DOHERTY asked if hospitals wouldn't be getting any money if it wasn't for the efforts of the attorneys. **Steve Browning** said that was correct.

SEN. DOHERTY said the Workers Compensation system is not working and it is not paying medical providers what they should be paid. He questioned if medical providers have tried to go to Workers Compensation and get paid what they are worth. **Steve Browning** said since the rates have been frozen in 1986 and then reversed in 1997 they have asked every legislative session to address that question. The legislature didn't act on that until last year and when they did they set the discount rate at a 69 percent floor.

SEN. BARTLETT asked when is an attorney necessary to win the medical benefits. The insurer is responsible for paying the reasonable cost and attorney's fees in addition to paying the medical benefits. **Steve Browning** said this is fine, but they are not the insurance company and simply want to get paid. **SEN. THOMAS** said he can't speak for insurance companies, but it doesn't seem unreasonable to put in the amendments. **EXHIBIT (16)**

SEN. BARTLETT said attorney costs and fees in Workers Compensation is defined in other sections of the statutes. She said in subsection (b) and (c) of the proposed amendments, sets up a 60 day period prior to the hearing of the case. If they made the offer 61 days before, would there be no attorney fees or costs paid for? **Al Smith** said before they get to that point, they have mandatory mediation and a lot of this has already been gone through with all parties involved. When they file to go to court, it is about 90 days to file and get the hearing date. They believe it is reasonable that the insurer have 30 days to make a decision. The 60 days provides them enough time to make a good decision.

SEN. BARTLETT said in subsections (a)-(c) the insurer would still be responsible for paying the reasonable cost and attorney fees that it accrued. **Al Smith** said that was correct.

SEN. HOLDEN asked if they are dealing with the Workers Compensation Fund of Montana. **SEN. THOMAS** said yes, they are the largest insurer in Montana.

SEN. HOLDEN said every employer that puts money into this system is part of that insurance company and is this where all the tax dollars go. **SEN. THOMAS** said yes most of it goes to the State Fund. **SEN. HOLDEN** asked isn't this the same fund the was \$500 Million in debt about four years ago. **SEN. THOMAS** said that could of been correct.

SEN. HOLDEN said if they start hitting up the Workers Compensation fund for attorney fees, they will drive this fund right back into debt. **SEN. THOMAS** said the problem they are trying to address is the percentage that they are going to compensate hospitals and providers. He said last session they came up with the 69 percent floor for compensation. With this legislation they are trying to make sure providers are compensated even though it is only at 69 percent.

Closing by Sponsor:

SEN. THOMAS said he has run into cases that would not be affected by this bill, but typically they are uninsured motorist cases. He said when an attorney gets involved they get part of the insurance check in these types of situations. He said they often talk about the big bad insurance companies. He referred to the amendments **EXHIBIT (16)** and said they should be considered in this bill. He said if no value is created by attorney representation then it shouldn't be paid for. But if there is a creation of value then it should be paid for.

ADJOURNMENT

Adjournment: 12:33 P.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus27aad)